IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE MARRIAGE OF

BRENT E. WALKER,
Petitioner/Appellant,

and

KATHRYN A. SIEMSEN-WALKER, NKA
KATHRYN A. SIEMSEN,
Respondent/Appellee.

No. 2 CA-CV 2019-0075-FC
Filed November 13, 2019

Appeal from the Superior Court in Pima County
No. D20160189
The Honorable Jennifer Langford, Judge Pro Tempore

AFFIRMED

COUNSEL

Remick West-Watt PLC, Tucson
By J.M. Stanlee West-Watt
Counsel for Petitioner/Appellant

Liberty, Audette & Manzi, Tucson
By Jennifer Manzi
Counsel for Respondent/Appellee

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Eppich and Judge Eckerstrom concurred.

E S P I N O S A, Judge:

¶1 In this domestic-relations case, Brent Walker appeals the trial court's order awarding spousal maintenance and attorney fees to Kathryn Siemsen. Walker argues the court erred by finding Siemsen eligible for spousal maintenance, determining the amount and duration of the award, and granting Siemsen's request for attorney fees. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the trial court's ruling. *In re Marriage of Downing*, 228 Ariz. 298, ¶ 2 (App. 2011). Walker and Siemsen married in 1986 and have two adult children. Walker petitioned for dissolution of the marriage in January 2016, and Siemsen requested an award of spousal maintenance. In August 2016, the trial court issued temporary orders awarding Siemsen exclusive possession of the marital home and Walker exclusive possession of their second home. The court found Siemsen was not eligible to receive pre-decree temporary spousal maintenance, but ordered Walker to pay half of the regularly occurring community living expenses associated with the marital residence and all of the regularly occurring community expenses associated with the second home. The court also awarded Siemsen $3,000 in pre-decree attorney fees.

¶3 In 2018, Walker and Siemsen entered into settlement agreements as to division of property and debts. After a trial on the remaining issues of spousal maintenance and attorney fees, the trial court made the following factual findings: (1) Siemsen is fifty-five years old and earns an annual salary of $66,705 as a program specialist, while Walker earns a base salary of $150,000 as a physician assistant but is also eligible to earn yearly bonuses; (2) Siemsen's financial affidavit listed her reasonable needs; (3) Siemsen can meet her basic needs through her employment, but she "lacks sufficient property, including property apportioned to her, to

provide for her reasonable needs"; and (4) Siemsen contributed to Walker's educational opportunities during the marriage. Accordingly, the court awarded Siemsen spousal maintenance of $1,500 per month until she reaches her full retirement age of sixty-seven.

¶4 As for attorney fees, the trial court found both Walker and Siemsen "equally unreasonable during the proceeding," but awarded Siemsen $10,000 in attorney fees based on the financial disparity between them. The court thereafter issued a final decree of dissolution, from which Walker appeals. We have jurisdiction pursuant to A.R.S. § 12-120.21(A)(1) and A.R.S. § 12-2101(A)(1).

Spousal Maintenance

¶5 Walker contends both that Siemsen is not eligible to receive spousal maintenance and that the amount and duration of the award is improper. We review spousal maintenance awards for abuse of discretion, *Sherman v. Sherman*, 241 Ariz. 110, ¶ 17 (App. 2016), considering first whether the spouse "meets the statutory requirements for maintenance set out in A.R.S. § 25-319(A)" and second, "whether the trial court properly considered the factors listed in A.R.S. § 25-319(B)," *Thomas v. Thomas*, 142 Ariz. 386, 390 (App. 1984). We view the evidence in the light most favorable to Siemsen and will affirm if there is any reasonable evidence to support the award. *See Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 14 (App. 1998).

Eligibility

¶6 The trial court found Siemsen met two eligibility factors listed in § 25-319(A): (1) she lacked sufficient property to provide for her reasonable needs and (2) she had contributed to Walker's educational opportunities during the marriage. Walker challenges the court's finding of the first factor, claiming its distinction between Siemsen's ability to meet her basic, but not reasonable, needs was erroneous. Without citation to authority, he asserts "courts do not distinguish between basic and reasonable needs, considering only the ability of the party to be capable of self-sufficiency based on post-dissolution income and financial resources awarded them at dissolution."

¶7 Walker's contention, however, ignores the relevant statutory language. The inquiry in determining eligibility for spousal maintenance is whether the person has sufficient property to provide for "*reasonable* needs"; the statute makes no mention of a person's basic needs. § 25-319(A)(1) (emphasis added). Although "reasonable needs" is not

statutorily defined, this court has noted "the receiving spouse's ability to earn income must be considered in light of some reasonable approximation of the standard of living established during the marriage." *Thomas*, 142 Ariz. at 391. Walker has demonstrated no error on this basis.

¶8 Next, Walker argues the evidence does not support the trial court's finding that Siemsen lacked sufficient resources to provide for her reasonable needs. But a review of the record reveals substantial evidence supporting the court's finding. *See Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, ¶ 27 (App. 2007). That evidence included Siemsen's testimony and her financial affidavit of monthly expenses. Moreover, Walker's expert, a financial planner, acknowledged that assuming the highest potential selling price of the marital home, Siemsen would be left approximately $1,200 short each month to cover the expenses in her affidavit.

¶9 Walker further argues the trial court's eligibility conclusion was based on the flawed "assumption that [Siemsen] would continue to enjoy the same standard of living as during the marriage" and that Siemsen's financial affidavit did not reflect her reasonable needs. In support, he points to other evidence before the court and asks that we come to a different conclusion about whether Siemsen's listed expenses were reasonable. Appellate courts, however, do not reweigh evidence, even if conflicting, because we "must give due regard to the trial court's opportunity to judge the credibility of the witnesses." *Hurd v. Hurd*, 223 Ariz. 48, ¶ 16 (App. 2009). And because substantial evidence supports the trial court's ruling, Walker has not demonstrated the court abused its discretion. *See In re Marriage of Inboden*, 223 Ariz. 542, ¶ 7 (App. 2010) (different courts may reach different conclusions without abusing their discretion).[1]

[1]Walker also argues the trial court abused its discretion in awarding Siemsen spousal maintenance on the basis of her contributions to his education. Because we uphold the court's conclusion that Siemsen was eligible for spousal support on one ground, we need not address his arguments as to this additional ground. *See In re Marriage of Gibbs*, 227 Ariz. 403, ¶ 16 (App. 2011) ("[W]e will affirm the trial court if its ruling was correct for any reason.").

Amount and Duration of Award

¶10 As noted above, we review whether the trial court properly considered statutory factors and will affirm its maintenance award if reasonable evidence supports it. *Boyle v. Boyle*, 231 Ariz. 63, ¶ 13 (App. 2012). Walker first claims the record does not provide substantial evidence to support the award because of "internally inconsistent findings" and "findings inconsistent with the evidence presented." Contrary to his assertions, however, the court considered each of the § 25-319(B) factors, and its factual findings are substantially supported by the evidence presented at trial and do not contradict its other findings. Those findings, among others, are (1) Walker and Siemsen "lived a very comfortable lifestyle," taking "expensive trips" and having "expensive hobbies including collecting antique clocks and skiing," *see* § 25-319(B)(1); (2) they were married "almost thirty years at the time of service," *see* § 25-319(B)(2); (3) Walker "is able to meet all of his needs including contributing to his retirement, paying court ordered obligations . . . [and] maintaining his new house and current living expenses," *see* § 25-319(B)(4); (4) Siemsen's earning capacity is "significantly less" than Walker's, *see* § 25-319(B)(5); and (5) she is "unable to meet her reasonable needs on her income and her equity in the marital residence without cashing out part of her retirement account," *see* § 25-319(B)(9).

¶11 Next, although Walker concedes his own expert confirmed Siemsen's need of more than $1,200 per month "to meet those needs described in her financial affidavit" that the trial court found reasonable, he nevertheless claims the court "abused its discretion in awarding [Siemsen] more than [her] expressed need." As noted by the court, however, the expert's calculation was obtained using the highest potential selling price to value Siemsen's share of the home equity, among other assumptions. The court's slight upward deviation from Walker's expert's calculation of the amount of spousal support Siemsen would reasonably need was not an abuse of discretion. *See In re Marriage of Hinkston*, 133 Ariz. 592, 593 (App. 1982) (well-settled rule of law that because trial court in best position to properly tailor award of spousal maintenance, the "court is given broad discretion to determine what is a reasonable amount, and we will not interfere with the amount awarded unless an abuse of discretion has been shown").

¶12 We also reject Walker's argument that the trial court erred by awarding Siemsen spousal maintenance until she reaches the age of sixty-seven. Walker argues such a duration was "unreasonable and unjustified"

because Siemsen only needed support "through the period of transition" after dissolution. The evidence of Siemsen's ability to meet her reasonable needs, however, was not based on short-term transitional expenses, but on her ongoing and continuing needs and her financial situation going forward. *See Helland v. Helland*, 236 Ariz. 197, ¶ 30 (App. 2014) (affirming duration of wife's spousal maintenance until financial independence could be achieved through retirement accounts and receipt of Social Security benefits); *see also Rainwater v. Rainwater*, 177 Ariz. 500, 503 (App. 1993) (principal objective of spousal maintenance, achieving financial independence, must be balanced "with some realistic appraisal of the probabilities that the receiving spouse will in fact subsequently be able to support herself in some reasonable approximation of the standard of living established during the marriage").

Attorney Fees

¶13 Finally, Walker argues the trial court abused its discretion by denying his request for attorney fees and awarding Siemsen $10,000 in attorney fees under A.R.S. § 25-324(A). That statute provides that the trial court, "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under this chapter." "[C]osts and expenses" include "attorney fees, deposition costs and other reasonable expenses." § 25-324(C). We review an award of attorney fees for an abuse of discretion. *Murray v. Murray*, 239 Ariz. 174, ¶ 20 (App. 2016).

¶14 The trial court expressly found both parties to have been "equally unreasonable during the proceeding" and declined to award fees on that basis. However, citing the financial disparity between the parties, the court awarded Siemsen her fees. Walker first challenges the lack of "findings in support of the conclusion that the parties were equally unreasonable during the proceeding." But he concedes that neither party requested factual findings. Indeed, "'[t]here is no obligation for the trial court to make findings of fact under . . . § 25-324' in the absence of a request," and "a party cannot challenge the lack of findings when none have been requested." *Myrick v. Maloney*, 235 Ariz. 491, ¶ 10 (App. 2014) (quoting *MacMillan v. Schwartz*, 226 Ariz. 584, ¶ 39 (App. 2011)).

¶15 Walker also asserts, without authority, "[t]he existence of a financial disparity between the parties does not alone mandate the award

of fees." We agree there is no "mandate," but, even when the party against whom fees are sought took a reasonable position, financial disparity may support a fee award under § 25-324. *See In re Marriage of Pownall*, 197 Ariz. 577, ¶ 29 (App. 2000). This is to effectuate the purpose of the statute, which is "to provide a remedy for the party least able to pay." *In re Marriage of Zale*, 193 Ariz. 246, ¶ 20 (1999). The disparity in the parties' resources here was well established by the evidence, thus, we cannot say the trial court abused its discretion by denying Walker's request and awarding fees to Siemsen.

Attorney Fees and Costs on Appeal

¶16 Siemsen requests her attorney fees and costs on appeal pursuant to § 25-324. *See* Ariz. R. Civ. App. P. 21(a). The record does not contain current or recent information regarding the parties' financial resources, and, in the exercise of our discretion, we decline to award Siemsen her attorney fees. *Coburn v. Rhodig*, 243 Ariz. 24, ¶ 16 (App. 2017). As the prevailing party, however, Siemsen is awarded her costs on appeal upon compliance with Rule 21, Ariz. R. Civ. App. P. *See* A.R.S. § 12-341.

Disposition

¶17 For the foregoing reasons, the trial court's ruling is affirmed.